# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**CWP No. 168 of 1999.**

**Judgment reserved on: 15.11.2006**

**Date of Decision**: December 28, 2006

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Lal Chand Prasad …Petitioner

**Versus.**

Registrar, Co-op. Societies & anr. .. Respondents.

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***Coram:***

***The Hon'ble Mr. Justice Deepak Gupta, Judge.***

***Whether approved for Reporting?***

**For the Appellant(s):** **Mr. Kuldip Singh, Sr.Advocate with Mr. Karan Kanwar, Advocate.**

**For the Respondent(s):** **Mr. J.S.Guleria, Law Officer.**

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**Deepak Gupta, J**.

This writ petition is directed against the order of respondent No.1 rejecting the claim of the petitioner.

At the outset, it would be pertinent to mention that earlier the petitioner had raised this claim in CWP No. 863 of 1993 before this Court which was disposed of on 7.5.1998 and the dispute was referred for decision to respondent No.1.

The claim of the petitioner is that though he was initially appointed as Clerk with respondent No.2 but he exclusively worked as Cashier for the period 30.3.1987 to 16.9.1993 and therefore, he is entitled to pay of a Cashier in terms of FR 49(1). The respondent No.1 has clearly held that the petitioner had been given the charge of Cashier exclusively and worked as Cashier w.e.f. 30.3.1987 to 16.9.1993. This finding has not been challenged by the respondent No.2. However, respondent No.1 rejected the claim of the petitioner on the ground that the petitioner though fully holding and discharging the duties of a higher post was not doing his ordinary duties of a clerk and, therefore, is not entitled to the remuneration on the higher post. FR 49(i) reads as follows:-

> "(i) where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the Competent Authority reduces his officiating pay under Rule

> 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;"
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> [ Emphasis supplied]

The respondent No.1 has relied upon the underlined portion of FR 49(i) to reject the claim of the petitioner. This order is under challenge before me.

I have heard Shri Kuldip Singh, senior counsel for the petitioner and Shri J.S.Guleria, learned Law Officer for respondent No.1.

Admittedly, the petitioner has worked against a higher post. In fact he has exclusively worked against a higher post. No doubt, he has not done the ordinary duties of his post of Clerk but he has carried out all functions including statutory functions of the cashier. It would be pertinent to refer to the instruction issued by the Government of H.P. in this behalf which reads as follows:-

> "When an officer is required to discharge all the duties of the other post including the statutory functions e.g. exercise of power derived from Acts of Parliament such as Income Tax Act or the Rules, Regulations, By-laws made under various articles of Constitution

such as FRs. C.C.S (CCA) Rules, CSRs, DFPRs etc. then steps should be taken to process the case for getting the approval of the competent authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49."

Admittedly, in the present case, the petitioner was required to discharge all the duties including statutory duties attached to the post of Cashier. Therefore, whether FR 49 is applied or the principle of equal pay for equal work is applied, the petitioner is entitled to the remuneration payable to a Cashier. The mere fact that formal orders had not been issued appointing him on officiating basis should not come in his way. An employee has no control over the passing of such an order. He has to function as per orders of his superiors. It was the duty of his superior officers to have ensured that formal orders appointing him as Cashier were issued. For the fault of the office in not issuing such order, the petitioner cannot be made to suffer. Since the petitioner had admittedly

performed all duties including statutory duties of a cashier, in my opinion, he is entitled to the remuneration of a cashier for the period 30.3.1987 to 16.9.1993.

The petition is accordingly allowed and the order of the respondent No.1 dated 18..7.1998/25.7.1998 is set aside and the respondent No.2 is directed to pay the remuneration of cashier to the petitioner for the period 30.3.1987 to 16.9.1993. No order as to costs.

December 28, 2006 ( Deepak Gupta ), J.

s.